IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Smt. Munni and others.
vs.
Smt. Rukmani Devi.

S.B.CIVIL SECOND APPEAL NO.420/2007
UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 1.11.2007 PASSED BY SHRI BALDEV RAM CHOUDHARY, ADDITIONAL DISTRICT JUDGE, SUJANGARH IN CIVIL APPEAL DECREE NO.25/2007 (7/2004).

DATE OF JUDGMENT ::: 10.12.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.GL Khatri, for the appellants.

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BY THE COURT:

Heard learned counsel for the appellants.

The appellants/defendants are aggrieved against the judgment and decree dated 12.5.2004 passed by the trial court by which the eviction decree was passed

against the appellants – heirs of deceased tenant. The appeal against the eviction decree was dismissed by the appellate court vide judgment and decree dated 1.11.2007.

Learned counsel for the appellants submitted that the original tenant/defendant Munshi died on 19.9.1994 and his legal representatives were taken on record on 1.10.1994. The legal representatives no.1/2 to 1/8 – sons and daughters of deceased tenant were minor at that time and they have been impleaded as party through guardian, their mother – defendant no.1/1 – wife of deceased tenant. According to learned counsel for the appellants, the mother could not have represented her minor sons and daughters as per the Mohammedan Law and, therefore, the decree passed by the trial court against the minors is nullity. It is also submitted that the appellants, who became major during the pendency of this litigation, submitted application before the first appellate court for impleading as respondents but the same was rejected by the first appellate court.

Another ground raised by the appellants is that the plaintiff/respondent herself did not appear in the witness box but produced her son as witness who gave his statement as power of attorney of the plaintiff. In view of the judgments of this Court as well as the Hon'ble Supreme Court, the power of attorney's evidence

is no evidence and, therefore, the courts below committed error of law by decreeing the suit of the plaintiff on the basis of statement of the plaintiff's power of attorney. In this regard, learned counsel for the appellants relied on the judgment delivered by the Hon'ble Supreme Court in the case of Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. and others reported in AIR 2005 SC 439 and the judgment delivered by this Court in the case of Sikhar Chand (Now Dead) through L.R.'s vs. Santi Kumar & Anr. reported in 2001 DNJ (Raj.) 727.

I considered the submissions of learned counsel for the appellants and perused the reasons given by the two courts below in the impugned judgments.

The suit of the plaintiff was decreed against the legal representatives of defendant Munshi on the ground of default in payment of rent as the defendant failed to pay rent during the pendency of the suit after its determination and the defence of the defendant was struck off. The suit was further decreed on the ground of non-user of the suit premises. The legal representatives of the deceased were taken on record as back as on 1.10.1994. The entire trial commenced and the suit was decreed on 12.5.2004. The legal representatives of deceased tenant jointly preferred

first appeal before the first appellate court which was dismissed by the first appellate court on 1.11.2007. Not only this, the present second appeal has been preferred by all the legal representatives of deceased Munshi jointly. The contention of learned counsel for the appellants that the mother of minor mohammedans could not have represented the minors in the present suit, is devoid of any force in view of the fact that the legal representatives are taken on record in the civil suit on death of the party. It is not necessary that those legal representatives should be always and necessarily heirs only. The legal representatives and heirs are different. The mother of these minors represented the estate of deceased tenant – Munshi and even one of the legal representatives would have fully represented the estate of deceased. In view of the above reason, the appellants have no reason to raise objection as any decree binding upon any of the legal representatives who has been impleaded after notice to others as party defendant, would bind all the legal representatives. In view of above, I do not find any illegality in the impugned judgments.

So far as the evidence on record is concerned, it is true that the witness produced by the plaintiff was also holding power of attorney but in the facts of the case, he had personal knowledge about the facts of the

case, therefore, the judgments relied upon by learned counsel for the appellants have no application to the facts of the present case and the evidence of the son of the plaintiff was good evidence as given on the basis of his personal knowledge also.

In view of the above, I do not find any substantial question of law involved in this appeal. Consequently, this second appeal, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya